

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 00-180
Table of Allotments,)	RM-9956
Digital Television Broadcast Stations.)	
(Fort Myers, Florida))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 14, 2002

Released: November 20, 2002

By the Chief, Video Services Division:

1. At the request of Fort Myers Broadcasting Company ("FMBC"), licensee of station WINK-TV, NTSC channel 11, Fort Myers, Florida, the Commission has before it the Notice of Proposed Rule Making, 15 FCC Rcd 19337 (2000), proposing the substitution of DTV channel 9 for station WINK-TV's assigned DTV channel 53. FMBC filed comments reiterating its support for its channel substitution proposal. Cox Broadcasting, Inc., parent company of the licensee of WFTV(TV), NTSC channel 9, Orlando, Florida, ("Cox"), and Post-Newsweek Stations, Florida, Inc., licensee of WPLG-DT, DTV channel 9, Miami, Florida, ("Post-Newsweek") filed comments. FMBC, Media General Communications, Inc. ("Media General")¹, Caloosa Television Corporation ("Caloosa")² and Post Newsweek filed reply comments.

2. Cox, Post-Newsweek and Media General (collectively, "Objectors") oppose the proposed channel substitution. They argue that a grant of FMBC's proposal will cause interference to: WPLG's co-channel DTV service in Miami (new interference to 25,947 people or 0.66 percent of WPLG's DTV service population);³ WFTV's co-channel analog service in Orlando (new

¹ Media General, licensee of WFLA-ATV, NTSC channel 8, Tampa, Florida, filed reply comments supporting Post-Newsweek and Cox's views as stated in their initial comments.

² Caloosa is the licensee of low power station WBSP-LP, channel 9, Naples, Florida. It opposes the proposed channel substitution because, among other things, its LPTV station will be displaced. Although entitled "Reply Comments," Caloosa's comments are untimely and will be dismissed because they raise new matters that should have been filed during the initial comment period. See Section 1.415(c) of the Commission's Rules. In any event, WBSP-LP is not a Class A-eligible facility and is therefore not entitled to protection against FMBC's proposal. See Establishment of a Class A Service, 15 FCC Rcd 6355, 6370-71 (2000), clarified on recon., FCC 01-123, ¶ 8-9 (released April 13, 2001).

³ Cox also states that the proposed substitution of Channel 9 will be short spaced to WFTV(TV)'s licensed transmitter site. It argues that proposal has the potential to decrease the quality of service received by 269,526 persons (10.76 percent of the station's service population), and that if this were a proposal for a new DTV station, it would fail the Commission's minimum spacing requirements. In addition, Cox asserts that if it relocates WFTV's

interference to 28,055 people or 1.12 percent within WFTV's Grade B service population);⁴ WFLA-TV adjacent channel analog service in Tampa (new interference to 30,785 people or 0.96 percent of WFLA-TV's analog service population). Objectors assert that while the Commission's interference methodology shows a loss of full power service to more than 82,000 persons, the significantly better propagation characteristics of Florida (*i.e.*, the "super refraction" phenomenon) suggest that figure is underestimated. They contend that even if these interference figures may in each case meet the Commission's *de minimis* interference standards, the potential greater loss of service is not justified merely to permit FMBC to serve its private economic interests by more than replicating its existing analog service, which it already does by virtue of its present DTV allotment.

3. In rebuttal, FMBC states that Post-Newsweek and Cox comments are in actuality, late-filed petitions for reconsideration of the DTV allotment standards adopted in MM Docket No. 87-268.⁵ FMBC notes that the Objectors concede that its proposal meets the Commission's *de minimis* interference standard, but instead argue that any loss of service is *prima facie* inconsistent with the public interest. FMBC argues that *de minimis* interference is, by definition, a level of interference having no significant effect and that the Commission has acknowledged that some loss of service is to be expected in these cases. In that regard, FMBC states that Section 73.623(c)(2) of the Commission's rules explicitly permits the level of potential interference present in this proposal.⁶

4. In reply, Post Newsweek reiterates its claim that adoption of FMBC's proposal would disenfranchise at least 82,679 viewers of their existing full power and digital television service. It points out that Cox also filed opposing comments noting the harmful interference that the FMBC's proposal would cause to Cox's co-channel analog in Orlando. Finally, Post Newsweek states that the public's existing analog and digital television service should not be sacrificed in order to enhance the

service from NTSC channel 9 to DTV channel 9 at the close of the DTV transition, it will cause increased interference of 4.43% to the co-channel operation of WINK-DT. It asserts that WINK-TV's current DTV allotment already more than replicates its existing analog service, and while its proposal will increase its digital service area by an additional 51,415, it would do so at the expense of at least 82,697 viewers that will lose existing full power analog and digital service, many more that will experience a degradation of service, and the viewers that would lose the service of displaced WBSP-LP.

⁴ Post-Newsweek also alleges that WINK-DT's current out-of-core channel 53 allotment does not justify the proposed channel substitution, inasmuch as it has an in-core VHF analog channel it may occupy after the DTV transition.

⁵ See Sixth Report and Order MM Docket No 87-268, 12 FCC Rcd 14588 (1997) ("Sixth Report and Order"); modified, Memorandum Opinion and Order on Reconsideration of Sixth Report and Order, 13 FCC Rcd 7418 (1998) ("Reconsideration Order"); modified, Second Memorandum Opinion and Order and Reconsideration of the Fifth and Sixth Report and Orders, 14 FCC Rcd 1348 (1998) ("Second Reconsideration Order").

⁶ FMBC also rejects Post-Newsweek's claim that its out-of-core allotment should not be a factor in assessing this proposed channel substitution. It notes the Commission has placed a burden on licenses with out-of-core DTV allotments to find in-core allotments. See Reconsideration Order, 13 FCC Rcd at 7461. Specifically, FMBC submits that its proposal meets all of the Commission's technical standards. FMBC states its proposal also facilitates the migration of WINK-DT to channel 11 at the end of the DTV transition period while reducing costs to FMBC and removes a DTV operation from non-core spectrum.

economic and competitive position of a single broadcaster.

5. **Discussion.** We have carefully reviewed all of the pleadings before us and, for the reasons that follow, we find that the public interest will be served by adopting FMBC's DTV channel substitution proposal. As Objectors recognize, FMBC's proposal complies with city-grade service and interference protection requirements, and is otherwise consistent with the Commission's technical standards for modification of a DTV allotment.⁷ Moreover, Cox's concern about its possible future use of channel 9, and Post-Newsweek's conclusion that other in-core channels may be available to FBMC after the DTV transition are speculative and require no further consideration. Because FMBC's proposal meets the Commission's technical standards, we believe that the public interest is served by substituting DTV channel 9 for DTV channel 53, which also permits station WINK-DT to reduce its transition costs and operate on an in-core channel in lieu of its current out-of-core allotment. Objectors have demonstrated nothing to the contrary.

6. DTV channel 9 can be allotted to Fort Myers, Florida, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates 26-48-01 N. and 81-45-47 W. In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Station WINK-DT with the following specifications:

<u>State & City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
FL Fort Myers	9	20.0	451	1134

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 6, 2003, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Fort Myers, Florida	9, 15, *31c

8. IT IS FURTHER ORDERED, That within 45 days of the effective date of this *Order*, Fort Myers Broadcasting Company shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 9 in lieu of DTV Channel 53 for station WINK-DT.

⁷ In this regard, we are not persuaded by Cox that this channel change proposal must fail because it would not meet the spacing requirements for a new DTV station. Specifically, while proposals to *add* a new channel to the DTV Table of Allotments are required to meet certain separation requirements set out in Section 73.623(d) of the Commission's Rules, such is not the case here, where the proposal is that to *modify* a channel allotment included in the initial DTV Table, which must meet the interference standards set out in Section 73.623(c).

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau